

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year.

(d) *Use of gasoline.* (1) The credit or payment described in paragraph (a) of this section is allowable only in respect of gasoline used on a farm in the United States for farming purposes. The credit or payment is not allowable with respect to gasoline used for non-farming purposes, or gasoline used off a farm, regardless of the nature of the use. If a vehicle or other equipment is used both on a farm and off the farm, or if it is used on a farm both for farming and nonfarming purposes, the credit or payment is allowable only with respect to that portion of the gasoline which was "used on a farm for farming purposes" as defined in paragraph (a) of § 48.6420-4. In determining if this requirement is met, neither the type of equipment or vehicle used nor its registration for highway use is material. However, the actual use of the equipment or vehicle and the place where it is used are material. For example, if a truck used on a farm for farming purposes is also used on the highways, gasoline used in connection with operating the truck on the highways is not taken into account in computing the credit or payment.

(2) For purposes of determining the allowable credit or payment in respect of gasoline used on a farm for farming purposes, gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the owner, tenant, or operator of a farm has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for gasoline used on a farm for farming purposes, it will be assumed that the gasoline purchased first was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

[T.D. 8043, 50 FR 32035, Aug. 8, 1985]

§ 48.6420-2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6420-1 with

respect to gasoline used after June 30, 1965, on a farm for farming purposes, shall cover only gasoline used during the taxable year on a farm for farming purposes. Therefore, gasoline on hand at the end of a taxable year as, for example, in fuel supply tanks of farm machinery or in storage tanks or drums, must be excluded from a claim filed for that taxable year (but may be included in a claim filed for a later taxable year if used during that later year on a farm for farming purposes). Gasoline used during a taxable year may be covered by a claim filed for that taxable year although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6420-1 (c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books; see paragraph (h) of this section.

(b) *Time for filing.* (1) A claim for credit with respect to gasoline used on a farm for farming purposes shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(2) A claim for payment of a governmental unit or exempt organization described in § 48.6420-1(c) must be filed no later than 3 years following the close of its taxable year. (See paragraph (h) of this section.)

(3) See § 301.7502-1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7502-1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit of one claim per taxable year.* Not more than one claim may be filed under section 6420 by any person with respect to gasoline used during the same taxable year.

(d) *Form and content of claim—(1) Claim for credit.* (i) The claim for credit with respect to gasoline used on a farm for farming purposes must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed

in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(ii) If an individual dies during the taxable year, the claim for credit may be made only for that portion of the individual's taxable year ending with the date of death. If a sole proprietorship, a partnership or corporation is terminated or liquidated during the taxable year, the claim for credit may be made only for the portion of its year ending with the date of the termination or liquidation.

(2) *Claim for payment.* The claim for payment with respect to gasoline used on a farm for farming purposes by a governmental unit or exempt organization described in § 48.6420-1(c) must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. The claim by such a unit or organization must be filed with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

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§ 48.6420-3 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* Credits or payments are allowable only for gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. No credit or payment shall be allowed or made under § 48.6420-1 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline on a farm for farming purposes. Similarly, payment may not be made with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221, which is used on a State prison farm for farming purposes.

(b) *Other payments or refunds available.* Any amount which, without re-

gard to the second sentence of section 6420(d) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6420-1 with respect to any gasoline is reduced by any other amount which is allowable as a credit or payable under section 6420, or is refundable under any other provision of the Code, to any person with respect to the same gasoline. Thus, a person who is the ultimate purchaser of gasoline may not file a claim for credit or payment with respect to that gasoline if another person is entitled to claim a payment, credit, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)-3(b)(2), 48.6416(b)(2)-2(d), and 48.6416(b)(2)-3(b)(1).

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§ 48.6420-4 Meaning of terms.

For purposes of the regulations under section 6420, unless otherwise expressly indicated—

(a) *Used on a farm for farming purposes.* The term “used on a farm for farming purposes” applies only to gasoline which is used (1) in carrying on a trade or business of farming, (2) on a farm in the United States, and (3) for farming purposes. Gasoline used in an aircraft will qualify if its use otherwise satisfies these requirements. For the meaning of the term “trade or business of farming,” see paragraph (b) of this section. For the definition of the term “farm,” see paragraph (c) of this section. For the definition of the term “farming purposes,” see paragraphs (d) through (g) of this section. The term “United States” has the meaning assigned to it by section 7701(a)(9).

(b) *Trade or business of farming.* A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for